

**CAPITAL PROJECTS ADVISORY REVIEW BOARD**  
**1115 Washington Street Southeast**  
**Office Building Two**  
**Conference Rooms SL-03**  
**Olympia, Washington**  
**February 11, 2010**  
**9:00 AM**

**Draft Minutes**

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**MEMBERS PRESENT**

Daniel Absher	General Contractors
Vince Campanella	General Contractors
Norman Strong	Architects
Damon Smith	Engineers
Ed Kommers (Vice Chair)	Specialty Contractors
John Ahlers	Private Industry
Olivia Yang	Higher Education
John Lynch	GA
Larry Byers	Insurance/Surety Industry
Robert Maruska (Chair)	Ports

**REPRESENTING**

**MEMBERS ABSENT**

Rep. Bruce Dammeier	House (R)
Senator Rodney Tom	Senate (D)
Senator Dale Brandland	Senate (R)
Rocky Sharp	Specialty Contractors
Christopher Hirst	Private Industry
Rodney Eng	Cities
Gary Rowe	Counties
Vacant	Public Hospital Districts
Dan Vaught	School Districts
David D. Johnson	Construction Trades Labor
Mark Riker	Construction Trades Labor
Cynthia Cooper	OMWBE
Rep. Kathy Haigh	House (D)

**STAFF & GUESTS**

Nancy Deakins, GA  
Danelle Bessett, GA  
Valerie Gow, Puget Sound Meeting Services  
Jim Parvey, City of Tacoma  
Tom Rutherford, City of Tacoma  
Rocky Gerber, Centennial Contractors  
Mike Purdy, Michael E Purdy Association  
Lisa Taylor, King County  
Rex DeMartin, The Gordian Group  
Jim Borrow, KCDA

Jeff Jenkins, City of Tacoma  
Jeff Capell, City of Tacoma  
Penny Koal, GA/PRC  
Linda A. Sullivan-Colglazier, OAG  
Justin Clarke, City of Tacoma  
Stan Bowman, AIA/WA  
Cathy McKay, Shea, Carr & Jewell  
Jeanne Rynne, GA, OSP  
John Price, ALUTIIQ  
Larry Stevens, MCAWW/WECA

**Welcome & Introductions**

Chair Robert Maruska called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:08 a.m. Everyone present provided self-introductions. A meeting quorum was attained.

Chair Maruska recognized Danelle Bessett as a new staff member supporting the Board.

**Approve Agenda**

Discussions on the 2010 Work Plan Task Force, membership of the Project Review Committee (PRC), and General Contractor/Construction Manager (GC/CM) training were added to the agenda.

**Ed Kommers moved, seconded by John Ahlers, to approve the agenda as amended. Motion carried.**

**Approve December 10, 2009 Meeting Minutes**

**Ed Kommers moved, seconded by John Lynch, to approve the December 10, 2009, meeting minutes as presented. Motion carried.**

**Public Comments**

There were no public comments.

**Report from Project Review Committee**

Penny Koal, Vice Chair, Project Review Committee (PRC), reported on January 28, 2010, two panels of the PRC were convened to consider project applications from Port of Seattle for DB (DB) and the Housing Authority of Snohomish County for GC/CM.

The Port of Seattle's project involved renewing or replacing 42 escalators under the DB process. The PRC unanimously approved the application. The project was appropriate for DB. The project team provided an excellent presentation.

The Housing Authority of Snohomish County applied for a 19 unit housing complex at Marysville Pointe. The project is small with construction costs at \$4 million with a very aggressive construction schedule and a complicated financial structure involving state and federal funding. After discussion, the panel believed the project did not attain the complexity or the scope to approve the project as a GC/CM project. The panel rejected the application. The Housing Authority had already advertised and shortlisted GC/CM firms.

The next PRC meeting is on March 25, 2010 with one application involving Mason General Hospital. Several other hospital districts have expressed interest in submitting applications as well.

Chair Maruska asked whether the PRC anticipates an appeal from the Housing Authority of Snohomish County. Ms. Koal said it's unknown as the applicants were questioned about future plans if the panel denied the application. The representatives indicated they would likely proceed because of federal funding as the Housing Authority can supersede state law, according to the officials.

Chair Maruska commented that there have been some issues with agencies applying to the PRC late in its respective process seeking to schedule a panel prior to regular scheduled panel reviews. The official position of the CPARB has been that as long as the statutory requirement of 60 days is achieved, no special meeting of the PRC will be scheduled.

**Membership of the PRC**

Chair Maruska advised members of a change in employment by Penny Koal, PRC. Nancy Deakins advised that a similar situation occurred with the change in employment of Darlene Septelka from King County to private industry. Ms. Septelka wanted to continue serving on the PRC. Subsequently, the CPARB added another position on the PRC designated as a private sector representative.

Chair Maruska advised members of the process PRC undergoes when reviewing applications. Ms. Koal has expressed a desire to continue serving on the PRC. If the CPARB approves the request, Ms. Koal would assume the Chair position of the PRC in July 2010.

Ms. Koal reported she will be working for South Puget Sound Community College as Dean of Facilities. Chair Maruska pointed out that the position is still an owner position with a state agency.

Olivia Yang suggested that by maintaining the protocol GA performs on behalf of community colleges, Ms. Koal should retain eligibility to serve. John Lynch affirmed Ms. Koal will continue working closely with GA when the college pursues construction projects.

***The CPARB affirmed through consensus that no change is necessary as Ms. Koal will continue serving in the same capacity.***

**City of Tacoma Design Build Project Discussion**

Chair Maruska reported the CPARB sent a letter to James Parvey, Assistant Public Works Director/City Engineer, City of Tacoma, inviting him to attend the meeting and discuss the project and the Board's concerns. A written response was received earlier in the week as well.

Chair Maruska welcomed James Parvey, Assistant Public Works Director/City Engineer; Jeff Capell, Assistant City Attorney; Tom Rutherford, PE, Project Manager; Josh Clarke, Project Manager; and Jeff Jenkins, Facility Division Manager, City of Tacoma.

James Parvey referred to the letter and indicated it represents the basis of the City's position. The project is important to the City because of its location at the north end of the City's business district. It is a neighborhood where there has been intense economic development in the last several years, as well as the City completing a large Local Improvement District in that area. The project is a public garage built in conjunction with private mixed-use retail and apartments.

Mr. Parvey displayed an aerial photo of the area and identified surrounding land uses. Other large redevelopment efforts in the area include redevelopment of the historic Elks Temple by the McMenamin brothers, Historic Spanish Steps, and Stadium Way. The property for the garage is located to the north and would establish a much needed anchor in the City's north end. The private portion will provide a much needed grocery store in the downtown core area and 70 units of market-rate housing. The most difficult aspect of the project is the three separate components involving the McMenamins development, the garage, which is a public project, and the private project of apartments and a grocery store. With respect to the garage there are two separate projects – the public portion of 270 parking stalls and the private portion of the housing and grocery store.

Chair Maruska asked whether the parking garage is located below the private development. Mr. Parvey affirmed its occupying one footprint.

Jeff Capell explained that provisions within the City's comprehensive plan discourage stand-alone parking garages and that the goal is incorporating multiple uses. The project proposal was presented to the City utilizing those principles, as the City needs parking in the area. Combining parking with residential and retail is a goal of the City, which is the driving force behind the proposal.

Mr. Parvey responded to questions about the Elks Temple project, which is under private development by the McMenamin brothers, which is adjacent to the project site. Mr. Capell clarified that the Elks Temple is a component of the project because of the aspect of the redevelopment of both parcels that came to the City at the same time. Both are subject to a development agreement by the parties. However, as the development agreement evolved and at the time of conclusion, the Elks Temple property became a stand-alone project and is not dependent upon the garage parking lot moving forward.

Olivia Yang asked whether there is a contractual relationship between the Elks project and the garage/mixed use projects. Mr. Capell indicated not actually, but the Elks project is a party to the development agreement from the aspect of cooperation and coordination. From a procurement standpoint, there are no contractual or financial ties. There will be a document executed between the mixed use development, the City, and the Elks projects for horizontal covenants that will run between the properties for joint maintenance issues.

Chair Maruska asked about the City's ownership of the condominium public garage. Mr. Capell indicated the City will maintain ownership. The City owns the property and will continue to own the property until such time that the Elks of Broadway project secures financing for its part of the development, at which time there will be an option for Elks to purchase the property. Elks on Broadway will own the underlying fee simple and the property and the first condominium estate will be built at the ground level of the parking garage with a number of common elements that is necessary to support the structure that Elks on Broadway will be responsible to pay. The second condominium estates will be the parking garage with two more estates above the garage consisting of retail and residential components. The City will always retain ownership of the garage with an option for the dirt to be purchased by Elks on Broadway after the company has proven its financial viability to build. They have 18 months from September 23, 2009, when the development agreement was signed. The City has always approached the project under the 39.040 definition of public works. Even though it may ultimately become a condo estate that is severed from the ownership of the property, it is still considered improvement and construction of public property because it's owned by the City.

Ms. Yang requested confirmation that the condominium project is located on land that may change ownership from the City to private parties with the garage owned by the City with mixed use owned by private development. Mr. Capell confirmed the scenario. Ms. Yang asked whether the homeowners association of the condominium will lease the land if the ownership of public land transfers to private party. Mr. Capell said the City is not paying for air rights because the private developer would also have to pay for air rights from some designated survey point.

Norman Strong asked whether the parking garage, after completion of the project, will continue to provide public access. Mr. Capell said a declaration of covenants and restrictions will apply vertically between the mixed use and the public property. There will be a designated number of parking stalls that will remain public access charged at hourly market rates. Within the 270 stalls, a designated section will be available for retail and residential paid at market rates. The parking garage will be constructed as a public works project. The garage will be owned by the City with parking leased. Mr. Strong noted that the issue with a mixed use development is the requirement to provide parking to adhere to the City's permitting process. It appears the developer is relying on those parking spaces to develop the project. Mr. Capell said that is the presumption; however, the developer has not undertaken the permitting process and it must account for parking. The ownership will never change as the City has an agreement for designated spaces to be leased.

Mr. Parvey added that the City has a number of other agreements with businesses that lease a percentage of parking stalls on an annual or longer-term basis based on market rates.

Mr. Parvey reported the City was certified to use the DB procedure in February 2009 by the PRC. One of the questions by the PRC was why the City selected the DB process for the project. The City reviewed Design Bid Build (DBB) as well as GC/CM. There was some intent to have one entity oversee the projects to avoid coordination problems.

Chair Maruska asked whether private development will be occurring concurrently as construction occurs on the parking garage. Mr. Parvey said the goal is for one integrated project as it moves forward to construction to avoid lags in completing different aspects. Because of the nature of the project, DB allows that opportunity

to incorporate innovation and single point of responsibility on the project. The budget is also within the range of \$10 million. With the GC/CM the project must be at least \$10 million, although the RCW does provide an exemption for project cost. That was one of the factors for why the City selected DB. The City estimates the project will cost \$9 million to \$10 million.

Chair Maruska asked whether that budget includes the cost of private development. Mr. Parvey said the estimate is based on a stand-alone parking garage. One of the other questions asked of the City was how the City will assure that the City only pays for City costs when developing in conjunction with a private developer. There is a requirement in the development agreement to ensure that doesn't occur. The City estimated the cost based on a parking garage. For additional requirements, such as larger footings to support the private development, the City may have the responsibility for ensuring the proper size of the footings, but those costs will be prorated. The City is approaching those issues in that type of a format. The City will work through the details and there will be a tracking process and the ability to audit to keep track of costs.

Mr. Parvey advised that the procurement process was a two-step process with the Request for Qualifications (RFQ). The City received four viable bids. Another item causing some confusion involves the nature of the private and public contract. Under the private contract, there is a requirement for a \$1 million investment in the mixed use portion of the project. That is not a public requirement. Early in the RFQ process, the City received many questions about the issue with the City sending out a clarification to address those questions. It appeared to satisfy the questions.

Mr. Kommers asked how clearly it was stated within the RFQ and whether it was possible for a contractor to bid only for the parking garage component. Mr. Capell advised that contractors could have, but it was apparent in the RFQ the goal was to have a contractor for the public contract as well as with the private contract for one point source for accountability and to maximize economies of scale. That intent was clearly stated in the RFQ. However, it could have been clearer on the separation of the requirement and that became apparent when questions were received. The City immediately issued clarifying information to inform bidders the investment requirement was only for the private development and not a City requirement. There were discussions about receiving bids for only the public component. The selection criteria included the willingness to complete both the private and public elements. However, if the most qualified bid was received only for the public element, the City believed its mandate under the state requirement was to consider those bids and reassess the goal of having one contractor.

Mr. Kommers said it appeared that the explanation is consistent with the RFQ. However, there was feedback from the community that it would be difficult for a contractor to participate only in the parking garage project and not the private development. He asked if that was some of the nature of the comments the City received, because the City didn't receive any bids for the garage project only. Mr. Capell affirmed the City did not receive any responses for only the garage component, but the City did clarify the issue and there were no additional questions. There was a seven-day response time, where parties could have submitted bids. If the City had received only responses for the parking garage and no responses for the private side, the City was informed that without the \$1 million investment, the Elks project would not proceed with the mixed use component. At that point, the City would have had to evaluate if a parking structure without the accompanying mixed use would be a viable project. Before of the downturn in the economy, there was construction occurring in the north end with many of those units vacant because of the lack of retail mixed use and an urban village environment. That is one of the reasons why the parking garage was so attractive. When the City sent the addendum to the RFQ, it should have been clear that the \$1 million investment was only for the private component of the project. Although preferable to select a contractor for both components, the entire RFQ process was for the City. Those same requirements did not apply for the mixed use component but in conjunction with the City, which is where the confusion arose. The RFQ included City requirements and

also for information purposes, what the requirements were for the mixed use. Part of the selection criteria considered bidders who were qualified to do both projects. However, the Elks counterpart was informed of the City's constraints and Title 39 requirements and if a bid was submitted only on the garage, the City must consider that bid.

Ms. Yang commented that the City had made an effort to explain how the City managed the expectations within the partnership. The concern by the Board is that although the City intended it or not, the message conveyed by the RFQ stated the bidder must invest in order to be considered. Mr. Capell said that may have been the message initially, but the City addressed and clarified questions prior to selection. The biggest indication that it was clarified was after the City sent out the information there were no additional questions raised after that point.

Chair Maruska asked whether the clarification included: *"...The desire to have the design-build team invest up to \$1,000,000 is unique to the private component of the development and is a criterion for EOB only, and not for the City except insofar as the city and EOB are endeavoring to select one team for the development..."*

Mr. Parvey affirmed that was the clarification.

John Lynch asked about the identity of the finalists at this point. Mr. Parvey reported the firms are GLY Construction and Pankow.

Linda A. Sullivan-Colglazier, OAG, referred to criterion 4.4 within the RFQ that states that the applicant must be able to advance \$1 million to be considered for the RFQ process and advance to the next stage. In the questions that were addressed, the answer to number one was the investment is a prerequisite for advancement to the Request for Proposal (RFP) phase. In the RFP, it appears to be only for the public garage and not for the private element. She asked if the City amended the document and removed the requirement for investing \$1 million for the public garage. Mr. Capell replied that it was part of the clarification. The intent of the City was ensuring that applicants applying for the public garage would know what was desired on the private element as well. In order for Elks on Broadway to select an applicant, that is the requirement they wanted. It was included as information, which is why the City later clarified it. It is not a City requirement.

Ms. Sullivan-Colglazier asked if there was any guidance that indicated an applicant could submit a RFQ for only the City's project. Mr. Capell said not expressively under those terms. The City was hoping for an applicant to build both projects to maximize accountability and economies of scale. It was never stated in those expressed terms that an applicant could submit for the garage separately because it defeated the purpose of securing one contractor for the entire project.

Mr. Strong asked whether DB was approved as a stand-alone garage or a public/private project. Ms. Yang explained that the City was certified as an owner. Chair Maruska said he believes the exemption relates to parking garages, but it appears the exemption is being applied against a mixed use facility, which didn't require an application to the PRC. He asked why the City didn't present the proposal as a mixed use DB to the PRC. Mr. Capell said the mixed use aspect of the project is not a City project, which is why the City established clear lines of separation between the two projects. The City is not building the mixed use aspect of the project - only the parking garage. That's clearly specified in the development agreement where the overriding responsibility on the City is to build a parking garage and only pay for the project as if it were a stand-alone garage. After the agreement was executed there was a difference in understanding the intent with Elks on Broadway in terms of a ceiling over the garage. The Elks indicated the ceiling was the City's. The City countered that it wasn't. As the conversation occurred, there was mention of other stand-alone parking garages with no roofs. Ultimately, Elks on Broadway conceded that issue. That is where the separation

occurs. The project is a public work under the definition of 39.04.01 up to the point where the garage ends. The DB contract is for the garage. Elks on Broadway has a separate contract for the mixed use.

Vince Campanella asked whether both components were under one RFQ. Mr. Capell said only one RFQ was issued because for the mixed use development, the owner is not subject to the statute because they are not a public entity. The City included informational aspects in the RFQ with a goal to find one contractor to complete both projects. The RFQ expressly stated that if selected, the contractor would be entering into one contract for the garage with the City subject to prevailing wage, retainage, and all public works requirements and if selected for the complete project, the contractor will enter into a separate contract with Elks on Broadway.

Mr. Ahlers said the contract selection process for either component involved a preference to have a single contractor and that the contractor would invest \$1 million. If selected to be the contractor, that was the criterion that the contractor was required to meet. Mr. Capell disagreed from the City's standpoint. Mr. Ahlers asked whether the two finalists are willing to do both projects and willing to commit to the investment. Mr. Capell affirmed that both finalists have agreed. Mr. Parvey added that all four applicants agreed to the criteria.

Larry Byers asked about the situation if the private developer goes bankrupt and the builder has invested a \$1 million. He asked about the status of the contractor and whether the contractor would proceed with building the garage. Mr. Capell said it depends. The development agreement includes language that stipulates Elks of Broadway to prove financing for the entire project otherwise the project doesn't move forward. The City wanted to account for that contingency upfront. Mr. Byers pointed out that sometimes projects can run out of money midway through the process. Mr. Capell said if that were to occur, the agreement has some remedy provisions as to how it's handled.

Nancy Deakins asked how the incremental costs for the foundation are handled. Mr. Capell said the submittals were required to account for costs for the parking garage and costs for the private development. There were very specific cost items allocated as a stand-alone and the remaining allocated to the mixed use development. Ms. Deakins asked how the City is coordinating the costs involved in increasing the size of the foundation to accommodate the private development above the garage. Mr. Capell said any work on the structure of the garage is prevailing wage. There will be costs accounted for and responsible by Elks on Broadway in terms of the increased cost over what a stand-alone parking garage would cost.

Mr. Campanella asked how the analysis will be completed. Josh Clarke explained that a structural engineer will design a stand-alone garage. For oversized footings and columns that need to be included, that incremental cost will be excluded from the City's contract and will be absorbed by Elks on Broadway.

Mr. Strong questioned whether the process abides by requirements if the PRC approved the project based on a stand-alone parking garage. Chair Maruska advised that the City only received certification as a public body rather than project approval. That is one of the fundamental issues as to whether the project should have been considered by the PRC. The statute indicates that for parking garages, public entities are exempt from seeking PRC project approval. If it's less than \$10 million even if owner certified, the project must be presented to the PRC to ensure appropriate projects are completed at the lesser dollar value based on the requested methodology. Mr. Capell added that the City referred to the statute that allows public bodies to use the DB procedure for parking garages regardless of cost. Chair Maruska said the dilemma is whether it's a mixed use project with a parking or whether it's a stand-alone parking garage. The City has interpreted it as any structure with parking as a parking garage. Mr. Capell said the City did not interpret the project in that aspect. If the

City was constructing the mixed use component it wouldn't contend it falls under 39.10.302. It would be a different approach. However, the City is not building the mixed use component, only the garage.

Ms. Yang said the City's argument is that the City is holding a DB contract for a garage. The fact that it happens to be the site of a mixed use condominium unit above it has nothing to do with the City's project.

Mr. Kommers asked whether the local construction community had sufficient opportunity to participate or bid on the parking garage project. Mr. Parvey reported one Tacoma firm bid on the project that was qualified. The construction market is ambiguous. For the Cheney Stadium project, the City received six proposals for the DB project. For the parking garage, the City received only four and shortlisted two companies. The applicants were represented by local firms and some out-of-state firms.

Mr. Capell asked for clarification on potential action by the Board. Chair Maruska said the Board is not anticipating any action, but is seeking additional information at this point. He apologized for the confusion.

Chair Maruska recessed the meeting for a break from 10:18 p.m. to 10:35 p.m.

**Ed Kommers moved, seconded by John Ahlers, to recess the meeting and convene an executive session with legal counsel for approximately 15 minutes at 10:36 a.m. to discuss the City of Tacoma parking garage project. Motion carried.**

**Chair Maruska reconvened the meeting at 11:02 a.m.**

Mr. Kommers reported after conferring with legal counsel during the closed session, the Board doesn't believe the process the City of Tacoma undertook is acceptable or within the intent of the statute as the Board envisioned. It's troubling to a number of members of the Board that the \$9 million parking garage in Tacoma didn't attract more bidders, which today would likely attract multiple bidders. It appears there are some good technical arguments on the legal side, but there was an indication in the RFP that there was a "pay to play" requirement involving \$1 million. The Board understands the clarification by the City, but it still is an indication that the contractor had to "pay to play" in order to bid on the parking garage project. If there is any way that the City could change that opportunity, the Board strongly encourages the City to revise the requirement. The Board at this time is not contemplating any action on the project. The Board will review potential statute changes to prevent or clarify a similar situation and will ask legal counsel to provide some information on public interest. The Board is empowered to decertify an owner from having the opportunity to pursue DB projects. However, the statute indicates that the proof must be within the public interest, which is difficult to quantify at this point. Legal counsel will assist the Board in identifying factors that will help define the public interest.

Mr. Capell commented that it was never the City of Tacoma's intent to run afoul of the statute. The Board is indicating that it doesn't believe the project doesn't meet the intent of the statute. It would help the City if the Board could clarify in what aspect the project doesn't meet the intent. Mr. Kommers said it primarily involves the "pay to play" requirement. In other models the Board's reviewed there have been similar situations with public owners. It boils down to an RFQ/RFP for the parking garage and an RFQ/RFP for the mixed use project. Although the City's justification for one contractor is understandable, the Board contemplates the opportunity for DB as enabling a public owner to build a project without undergoing a complicated process.

Mr. Capell advised that he is an attorney that advises his clients on walking the narrow path of compliance. In this particular instance, it appears the Board is suggesting that the City should have released the RFQ/RFP process for the garage independently and then coordinated the mixed used project after the fact.



Chair Maruska said there are a number of models other public owners have used in similar circumstances to accomplish the goals. He cited the University of Washington as one example.

Ms. Yang offered to share details with the City representatives. Chair Maruska said the Port of Seattle also pursued a similar type of a project on the waterfront.

Mr. Kommers expressed appreciation by the Board for City of Tacoma officials to meet with the Board to discuss the process. The experience was a learning process for all parties.

Chair Maruska said there will be no further action from the Board. The minutes will reflect the discussion.

Mr. Capell said he's concerned with the City moving forward and jeopardizing its owner certification status. Mr. Kommers said the Board needs to understand how to use that process if it were to move in that direction. At this time, no action is forthcoming. Chair Maruska added that in the future if the Board took action, there would be a process including a hearing and a public notice for decertification.

Chair Maruska advised the Board on recent activities involving public owners. United General Hospital in Sedro-Woolley advertised for DB for a \$30 million expansion. There were some inquiries to the Board resulting in some follow up through the Board. Subsequently, the CEO of the hospital agreed to withdraw the solicitation and work on some revisions for following a process meeting all statutory requirements. More people are approaching the Board on questions regarding legality of some projects. It also creates some work the Board didn't contemplate. The Board has by statute, the ability to develop WACs and take additional actions. The Board, up to the point, hasn't pursued any action, but could in the future consider some regulatory functions. To date, it's been a cooperative situation.

Ms. Yang asked whether there is a suggestion to add regulatory action on future agendas. Chair Maruska advised that the Board will have to consider that approach at some point. While the Board doesn't necessarily want to function as regulators, the Board will need to spend some time working through what actions will be necessary.

#### **Job Order Contracting 2009 Report**

Chair Maruska said there are improvements in reporting and in the analysis as well as opportunities to improve the process.

Ms. Deakins presented a narrative summary of the data. The data is a snapshot for a particular time period and not reflective of particular contract periods. The statute requires public bodies to report at the end of each contract year. The task force wants to move forward with contract years rather than a specific time period.

Five public bodies reported with four job order contractors used for a total value of \$24.3 million. The report includes the number of work orders and change orders. For this particular survey, job order contractors were asked to break out direct labor and material and equipment purchased recognizing that the material and equipment purchased is part of the subcontract value of the project. The Office of Women and Minority Business Enterprises (OMWBE) verified certified firms. Although the form was changed, information was added on OMWBE certification, which was inaccurate. In the future, OMWBE will affirm the verification. Consequently, the participation percentage rate dropped after OMWBE certified the firms. The OMWBE recognized the extraordinary efforts by Centennial Construction to attain 39.1% MWBE participation.

Ms. Deakins reported the task force discussed improving the process. For change orders, there was an observation that the University of Washington had a high rate of change order rate for work orders that is a point of concern. There were improvements in using different contractors. For JOC operating costs, Centennial included a separate number in the report for JOC operating costs, which required staff to compute other entries to ensure the figures were comparative. It's an area to consider for further clarification. The task force recommends changing the reporting to contract year, consider JOC operating costs, and developing guidelines for owners and contractors for the use of JOCs. The task force expressed interest in understanding what the Board needs to assist them in future decisions on future legislation.

Mr. Strong suggested providing an average or range of cost per work order. Ms. Deakins advised that the figure is \$83,000. Mr. Strong said it might be helpful to understand how design services were procured whether through a term contract or how the designs were developed for job order contracting processes. Chair Maruska asked whether it would be adequate to indicate on the form whether design services were performed under the JOC or by the owner. Mr. Strong agreed that would be helpful information. Mr. Lynch suggested designating the JOC, owner, or the owner's consultant.

#### **Integrated Project Delivery/Best Value Task Force Report**

Mr. Lynch reported on the January task force meeting with members focusing on the Best Value method. Several decisions included not attempting to develop draft legislation but a list of factors that might be included in a Best Value statute. Members discussed the option of using Best Value contracting for all state agencies, similar to DB and GC/CM. The CPARB PRC would review and approve projects through an application process similar to the school district review board process. The initial statute might limit the number of projects or pilot programs up to 10 projects. There would be dollar range low enough to capture smaller, specialty projects, such as University of Washington medical projects. The agency would need to show why the process would benefit the project during the PRC review. The overall project management would resemble DBB except at the point of contractor selection factors other than price would be considered. Task force members discussed what those factors might be. Typically they include contractor qualifications, experience, and past performance, etc. Task force members discussed what a contractor could contribute to the project to increase the project value to the owner. Those factors included time schedule management, early completion, decreasing impacts to project occupants, or specific value engineering proposals in conjunction with the contractor's proposal to evaluate the value of the contractor.

Mr. Lynch advised that Daniel Absher provided some examples of federal projects using Best Value methodology. Two more task force meetings are scheduled prior to the next CPARB meeting on March 11 and April 8. More specific information will be presented to the CPARB's May meeting, such as pilot language and an informational presentation. The task force is anticipating at the September meeting, CPARB's approval to move a recommendation to the Legislature for a bill during the 2011 session.

Mr. Strong commented on the good work of Mr. Lynch. The focus on Integrated Project Delivery has been deferred temporarily to afford time to work on Best Value. The task force will focus on Integrated Project Delivery. Public owners on the task force have offered some compelling statements.

Mr. Lynch said the task force meetings are held at the Carpenter's facility in Kent.

#### **Report on GC/CM Training**

Mr. Kommers reported he previously coordinated the GC/CM training program. However, this year he is not coordinating training. Ms. Yang is the lead of the task force. He thanked Ms. Yang and the AGC Education Foundation, which sponsored the training on January 28-29. The coordinator was Phil Lovell from PRC along with Curt Gimmetstad, Absher Construction. There were 50 participants. Summary evaluations indicate the

training was well received. Attendees now include a mixture of public owners and contractors, which provided a good forum for discussion. The training is proceeding well and an endeavor the Board should continue supporting.

Ms. Koal asked if similar training has been considered for DB. Mr. Kommers said there has been an inquiry and the DBIA has discussed the issue with staff. The Board would support the effort if someone stepped forward to coordinate the training.

Mr. Campanella said he attended DBIA DB training at the University of Washington.

Ms. Yang pointed out the option of the Board, at some point, requiring key members of staff to have training for those agencies to be certified as a public owner. If there was a common baseline interpretation of the law, problems would be minimum. As problems occur, new laws are established which inadvertently punish those who abide by the law.

### **CPARB 2010 Legislative Discussions**

Chair Maruska reported CPARB's MC/CM and EC/CM SB 6401 successfully passed from the Senate.

Ms. Deakins report HB 2675 is still in Rules and has until Tuesday, February 16, to leave the House. Chair Maruska said if the bill leaves the House, both bills will have passed both houses.

Members discussed language within the two bills, which is similar.

Ms. Deakins reviewed the status of legislative bills:

- HB 1690 - Limits public owners to what's allowed under 39.10. The bill passed the House and was referred to the Senate.
- SHB 1992 – Died, never left the Capital Budget Committee.
- HB 2517/SB 6327 - exempting housing authorities passed to Rules. The bill exempts housing authorities if authorized under the federal government
- HB 2555/SB 649 - Labor and Industries enforcement issues. Both bills passed to Rules
- HP 2575/SB6278 - Expanding membership of CPARB to including one member representing regional transit authorities. HB passed the House. The member would be appointed by the regional transit authorities. However, no specific organization has been identified to coordinate the appointment.
- 2SHB 2603 - Requires agencies to give small businesses an opportunity to comply with a state law or agency rule before imposing a penalty by allowing a 48-hour compliance provision. Ways and Means passed the bill.
- SHB 2617/SSB6426 – Eliminating certain boards and commission. SHB removed CPARB from the elimination list.
- SHB 2789 – Unsure of issue surrounding the bill.
- HB 2805 – Regarding public works involving off-site prefabrication for specific materials. The bill is in Rules. The bill is opposed by AGC. The bill did not pass last year and died on the last day of session.
- SHB 2826/SSB 6575 – Concerning recommendations of the joint legislative task force on the underground economy.
- HB 2868 – Concerning school district bidding procedures for purchases and public works projects allowing for negotiation with contractors within 5% of the low bid. House Bill is dead.

- HB 3047 – Establishes a medical roster for the University of Washington for projects under \$5 million for medical projects. A SSB includes some amendments from NEPA and from the Independent Business Association. The SSB moved to Rules.
- HB 3055 – Regarding conditions of requirements of contractors' bonds for public contracts. House Bill is dead.

#### **2010 Work Plan – Identify Task Forces**

John Ahlers asked members to consider establishing a work group to look at responsibility and eligibility criteria. There has been some interest by the community, particularly by contractors and specialty contractors, that the responsibility criteria that is an element of the public works bidding program is becoming so detailed and tailored to particular projects that there are concerns that the environment is anti-competitive. There should be more specific guidelines for owner organizations to follow to ensure eligibility and responsibility criteria are competitive while ensuring the objectives are achieved for a responsible contractor to perform the work. Mike Purdy, who is retired from the University of Washington, had a significant role in establishing the original responsibility criteria. If the Board approves the request for a work group, Mr. Purdy has agreed to participate.

Mr. Kommers recommended for consistency to name the group as the Responsibility Eligibility Task Force. Additionally the task force could discuss eligibility requirements for subcontractors and develop a model for eligibility. Participation on the task force will be greater after the session ends. Mr. Kommers offered to serve on the task force.

**John Ahlers moved, seconded by Ed Kommers, to establish a Responsibility Eligibility Task Force. Motion carried.**

Mr. Ahlers volunteered to serve as chair in the interim until the task force is established.

Mr. Strong recommended the task force consider the overall outcome sought by everyone. He suggested a process of evaluation through a white paper on what is currently allowed. There may be some misperceptions by public owners and design consultants on the issue.

Members discussed membership of the task force. Suggested members included representatives from GA, Ports, City of Seattle, University of Washington, and general contractors. Ms. Deakins offered to email an announcement on the task force describing its focus of work. Mr. Ahlers offered to provide information on the scope of work of the task force to Ms. Deakins.

Mr. Ahlers described the intent of the review.

Ms. Deakins advised that at the Board's September meeting, there were some language issues involving DB Modular, as well as other issues. No action was taken. Mr. Kommers said the language for modular is still standing. The next legislative bill can include some language. Chair Maruska asked whether it's appropriate to work on a cleanup bill for the 2011 session. Mr. Kommers suggested deferring work until late summer or fall.

*John Ahlers left the meeting.*

#### **Set Next Meeting Agenda**

The next meeting is May 13, 2010. Future agenda items include:

- Cleanup Task Force will start in fall.
- Establish potential Sunset Task Force and IPD/Best Value Task Force.

The May 13 agenda will include discussions on Best Value, PRC report, data collection efforts, Board membership regarding hospital and school district participation, and the AG report. Ms. Deakins offered to provide a post session status report and a potential budget discussion if the budget doesn't contain funding for the CPARB.

**Adjournment**

**Ed Kommers moved, seconded by Norman Strong, to adjourn the meeting at 12:09 p.m. Motion carried.**

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Robert Maruska, CPARB Chair

Prepared by Valerie L. Gow, Recording Secretary/President  
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